(26,018)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 551.

ISABEL KOUNS O'PRY, SOLE SURVIVING DESCENDANT AND SOLE HEIR OF JOHN KOUNS, SURVIVING PARTNER OF GEORGE L. KOUNS AND JOHN KOUNS, AND CHARLES SCHNEIDAU, SUBSTITUTED ASSIGNEE IN BANKRUPTCY OF GEORGE L. KOUNS, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 29, 1917.

1 In the Court of Claims.

No. 31940.

ISABEL KOUNS O'PRY, Sole Surviving Descendant and Sole Heir of John Kouns, Surviving Partner of George L. Kouns and John Kouns,

v.

THE UNITED STATES.

I. *Petition.*

(Filed November 23, 1912.)

To the Honorable the Court of Claims:

The claimant, Isabel Kouns O'Pry, respectfully represents:

1. That she is sole surviving descendant and sole heir of John Kouns, who was surviving partner of the firm composed of George L. Kouns and John Kouns, both deceased, who did business during and after the civil war in the State of Louisiana in cotton planting and in running steamboats, and that she has been recognized as such sole surviving descendant and sole heir by the Civil District Court of the Parish of Orleans and State of Louisiana, being the parish and State wherein said John Kouns was domiciled at the date of his death, and by such court she has been sent into possession, as such sole heir, of all the estate of said John Kouns, including rights of action, her letters of authority being brought into this court and annexed hereto and marked "Exhibit A."

2. On the 6th day of June, 1865, said George L. Kouns and John Kouns were owners of 900 bales of cotton in two lots of which
2 350 bales had been raised in the State of Texas and purchased by them and 550 bales had been in greater part raised by them upon their own plantation near Shreveport in the State of Louisiana. Said cotton had been brought by them from the vicinity of Jefferson, Texas, and Shreveport, Louisiana, by their own steamboats after the cessation of hostilities and arrived in New Orleans on the 6th day of June, 1865. Said cotton was then and there worth the sum of $123,110.

3. On said date the act of Congress approved July 2, 1864, was in force, entitled "An Act in addition to several acts concerning commercial intercourse between loyal and insurrectionary States and to provide for the collection of captured and abandoned property and the prevention of fraud in States declared in insurrection," 13 Stat. L. 375. Sec. 8 of said act provided as follows:

"And be it further enacted, that it shall be lawful for the Secretary of the Treasury, with the approval of the President, to authorize

agents to purchase for the United States any products of States declared in insurrection, at such places therein as shall be designated by him, at such prices as shall be agreed on with the seller, not exceeding the market value thereof at the place of delivery, nor exceeding three-fourths of the market value thereof in the City of New York at the latest quotations known to the agent purchasing: Provided, That no part of the purchase money for any products so purchased shall be paid or agreed to be paid out of any other fund than that arising from property sold as captured or abandoned, or purchased and sold under the provisions of this act. All property so purchased shall be forwarded for sale at such place or places as shall be designated by the Secretary of the Treasury, and the moneys arising therefrom, after payment of the purchase money and other expenses connected therewith, shall be paid into the Treasury of the United States; and the accounts of all moneys so received and paid shall be rendered to, and audited by the proper accounting officers of the Treasury."

3 Said act of July 2, 1864, was an amendment of the act of March 12, 1863, entitled "An act to provide for the collection of abandoned property and the prevention of frauds in insurrectionary districts within the United States," 12 Stat. L. 820.

4. In pursuance of the authority thus conferred, the Secretary of the Treasury designated certain cities, among them the city of New Orleans, as places of purchase, and appointed purchasing agents. By regulations dated May 9, 1865, he directed that to meet the requirements of the 8th section of the act of July 2, 1864, the agents should receive all cotton brought to the places designated as places of purchase, and forthwith return to the seller three-fourths thereof, or sell the same and retain out of the price thereof the difference between three-fourths the market price and the full price thereof in the city of New York.

5. During the month of June, 1865, the purchasing agent at New Orleans, appointed by the Secretary of the Treasury as aforesaid, was Otis N. Cutler. On the arrival of the cotton aforesaid on June 6, 1865, said Cutler, as such agent, took said cotton into his possession and refused to release the same or to allow the owners to have any custody or control thereof until they paid to him one-fourth of the market value of said cotton as hereinbefore set forth, being the sum of $30,777.50. Said owners paid said sum under protest, whereof $13,695.92 was paid on June 12 and the balance on June 15 and June 20, 1865.

6. Said cotton so taken was the property of said George L. Kouns and John Kouns, and the money paid to secure the release of said property was also the property of said George L. Kouns and

4 John Kouns. Said money, being the proceeds of the cotton so taken, was placed in the Treasury of the United States, and said net proceeds, amounting to the sum aforesaid of $30,777.50 remain in the Treasury of the United States.

7. On the 13th day of June, 1865, the President of the United States made proclamation as follows (13 Stat. L. 763):

"Now, therefore, be it known that I, Andrew Johnson, President of

the United States, do hereby declare that all restrictions upon internal, domestic and coastwise intercourse and trade, and upon the removal of products of States heretofore declared in insurrection, reserving and excepting only those relating to contraband of war, as hereinafter recited, and also those which relate to the reservation of rights of the United States to property purchased in the territory of an enemy, heretofore imposed in the territory of the United States east of the Mississippi River, are annulled, and I do hereby direct that they be forthwith removed."

8. Thereafter an action was brought in the proper court of the State of New York, in the city of New York, on the 6th day of July, 1871, by said George L. Kouns and John Kouns against said Otis N. Cutler, alleging that the retention of their cotton and exaction of money from them was unwarranted by law and that he was liable to them for the same and for all damages arising from his actions aforesaid. Said case was thereafter removed to the United States Circuit Court for the Southern District of New York, and judgment was rendered in said court in favor of said George L. Kouns and John Kouns in the sum of $30,883.30. Upon writ of error prosecuted by said Cutler in the Supreme Court of the United States, said judgment was reversed and the Circuit Court directed to order a new trial. Therefore, said suit was dismissed by said Circuit Court.

5 9. On the 3d day of March, 1911, the following provision was made by Congress as a portion of the Judicial Code:

"Sec. 162. The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June the first, eighteen hundred and sixty-five, under the provisions of the Act of Congress approved March 12, 1863, entitled 'An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within United States,' and Acts amendatory thereof, where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court; and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding."

10. By reason of the facts aforesaid a claim has accrued to this claimant as sole surviving descendent and heir as aforesaid of John Kouns, surviving partner aforesaid, under Sec. 162 of said act of March 3, 1911, for the net proceeds in the Treasury of the property of the claimant taken under the provisions of the act of July 2, 1864, amendatory of the act of March 12, 1863, said claim amounting to $30,777.50.

11. The claimant is, and said John Kouns and George L. Kouns were, at the times set forth in the foregoing petition, citizens of the United States. The claimant and said decedents have at all times borne true allegiance to the government of the United States and have not in any way abetted or given encouragement to rebellion against said Government, that is to say, if any such acts were committed during the late civil war between the years 1861 and 1866,

a full pardon has been granted therefor by the President of the United States.

6 No assignment or transfer of this claim, or of any part thereof or interest therein has been made; and the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States. And the claimant prays judgment for thirty thousand seven hundred seventy-seven dollars and fifty cents ($30,777.50).

KING & KING,
Attorneys for Claimant.

GARBER & GARBER,
Of Counsel.

STATE OF ALABAMA,
County of Jefferson, ss:

Isabel Kouns O'Pry, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

ISABEL KOUNS O'PRY.

Subscribed and sworn to before me this 19th day of November, 1912.

ALPHONSE J. CUNEO,
[SEAL.] *Notary Public.*

7 EXHIBIT "A" TO PETITION.

UNITED STATES OF AMERICA,
State of Louisiana:

[SEAL.]

Civil District Court for the Parish of Orleans.

I, Thomas Connell, Clerk of the Civil District Court for the Parish of Orleans, do hereby certify, that the annexed document is a true, correct, and complete copy of the Original Judgment, read, rendered and signed in open Court this 23rd day of October, 1912, in the matter entitled Succession of John Kouns and Mrs. Rebecca Dillon Kouns, his wife, bearing the No. 102,190 of the docket of this Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at the City of New Orleans, on
8 this 23rd day of October in the year of our Lord, one thousand nine hundred & 12 and in the 137th year of the Independence of the United States of America.

T. CONNELL, *Clerk.*

I, Fred D. King, presiding Judge of the Civil District Court for

the Parish of Orleans, do hereby certify that Thomas Connell is the Clerk of said Court, that the same is a Court of Record, having probate jurisdiction, and that the signature, T. Connell, clerk, to the foregoing certificate is in the proper handwriting of him, the said Thomas Connell, clerk; to his official act as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the City of New Orleans, on the 23rd day of October, in the year of our Lord one thousand nine hundred & 12.

FRED D. KING,
Presiding Judge.

9 I, Thomas Connell, Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that Fred. D. King, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, presiding Judge of the Civil District Court for the Parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said Court, this 23rd day of October, 1912.

T. CONNELL, *Clerk.*

10 *Judgment.*

Civil District Court for the Parish of Orleans, State of Louisiana.

No. 102,190, Division —.

Succession of John Kouns and Mrs. Rebecca Dillon Kouns, His Wife.

On considering the petition in the above-entitled and numbered cause, filed by Mrs. Isabel Kouns, widow of James T. O'Pry, asking to be recognized as the sole heir of, and to be sent into possession of, the succession of her late father, John Kouns, and of her late mother, Mrs. Rebecca Dillon Kouns, and on considering the evidence submitted to the Court, and on considering the affidavits and exhibits on file in said cause, the evidence being in favor of granting the petition—

It is ordered, adjudged and decreed that said Mrs. Isabel Kouns O'Pry, widow of James T. O'Pry, be recognized as the
11 sole surviving descendant and the sole heir of her late father, John Kouns, and of her late mother, Mrs. Rebecca Dillon Kouns, wife of said John Kouns, and that she be sent into possession as such sole heir, free from the payment of any inheritance tax, of all of the estate, property, rights of action, claim, rights and assets of every kind whatsoever belonging to her late father, John

Kouns, and her late mother, Mrs. Rebecca Dillon Kouns, wife of said John Kouns, deceased.

Judgment read, rendered and signed in open Court this 23d day of October, 1912.

(Signed) GEO. H. THEARD, *Judge.*

12 II. *Defendant's Demurrer to the Petition.*

(Filed January 3, 1916.)

Defendant demurs to the petition in the above-entitled case for the reason, first, that it does not set forth a cause of action against the United States; and, second, because the court has no jurisdiction over the claim under section 162 of the Judicial Code.

HUSTON THOMPSON,
Assistant Attorney General.
W. F. NORRIS,
Assistant Attorney.

13 III. *Argument and Submission of Demurrer.*

This case was argued in favor of the demurrer by W. F. Norris, and in opposition thereto by George A. King, and submitted February 28, 1916.

14 IV. *Order Sustaining Demurrer.*

(Filed March 13, 1916.)

No. 31940.

ISABEL KOUNS O'PRY

v.

THE UNITED STATES.

In this case it is Ordered that the defendants' demurrer be sustained, with leave to claimant to amend her petition within forty days.

Opinion by Judge Barney.

15 V. *Opinion of the Court.*

Court of Claims of the United States.

No. 31940.

ISABEL KOUNS O'PRY, Sole Surviving Descendant and Sole Heir of John Kouns, Surviving Partner of George L. Kouns and John Kouns,

v.

THE UNITED STATES.

(Decided March 13, 1916.)

BARNEY, *Judge*, delivered the opinion of the court:

The decision in this suit arises upon a demurrer of the defendants to the plaintiff's petition. The averments of the petition are substantially as follows: The plaintiff is the sole heir of John Kouns, who was the surviving partner of a firm composed of George L. Kouns and John Kouns, both deceased. On the 6th day of June, 1865, said firm was the owner of 900 bales of cotton, of which 350 bales had been raised in the State of Texas and purchased by said firm and the balance in greater part raised by it on its own plantation in the State of Louisiana. This cotton on the above date was brought by said firm to the city of New Orleans. At that time the purchasing agent of the Government at New Orleans appointed by the Secretary of the Treasury under the act of July 2, 1864, 13 Stat. 375, was Otis N. Cutler. On the arrival of said cotton at New Orleans said Cutler as such agent took the same into his possession and refused to release it until its said owner paid to him one-fourth of the market value thereof, the same being the sum of $30,777.50. Said firm paid said sum under protest, whereof $13,695.92 was paid on June 12th and the balance between June 15th and 20th, 1865. Said sum so collected by said Cutler of said firm was placed in the Treasury of the United States and now remains there.

The plaintiff seeks to recover said sum from the defendants by virtue of the several statutes hereinafter cited and discussed. It is averred that the plaintiff has been recognized by the civil district court of the parish of Orleans, in the State of Louisiana, where said John Kouns was domiciled at the time of his death, as his sole heir and as such has been declared to be entitled to the possession of all of his estate, including choses in action. Whether such right would entitle her to bring a suit for such entire copartnership claim might perhaps be questioned, but as the decision of that question would only determine the proper parties to this suit it is neither considered nor decided, but we have deemed it advisable to decide the demurrer upon the legal merits of the claim set out in the petition.

We now come to a discussion of the statutes the construction of which determines this question. By section 3 of the act of July 13,

1861, 12 Stat., 255, it was enacted that it would be lawful for
16 the President by proclamation to declare that the inhabitants of any State or part of a State in rebellion were in a state of insurrection and that thereupon all commercial intercourse by and between the same and citizens thereof and citizens of the rest of the United States should cease and be unlawful. August 16, 1861, the President declared, among others, the States of Louisiana and Texas to be in a state of insurrection and forbade all commercial intercourse between the same and the citizens of other States. Such was the state of affairs as to the citizens of those two States and their rights and privileges when the law commonly known as the captured and abandoned property act (12 Stat., 820) was enacted. It provided, among other things, for the appointment of agents of the Government to receive and collect abandoned or captured property within insurrectionary districts (not including war materials) and to sell the same in the manner directed and pay the proceeds thereof into the Treasury of the United States. The act further provided that "at any time within two years after the suppression of the rebellion any person claiming to have been the owner of such abandoned and captured property could bring suit" in this court for the recovery of the proceeds thereof so paid into the Treasury, less expenses of sale, transportation, etc., upon proof of ownership and, in addition, that he had not given any aid or comfort to the rebellion.

The act of July 2, 1864, 13 Stat. 375, was entitled, "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection." Section 8 of that act is as follows:

"Sec. 8. And be it further enacted, That it shall be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of States declared in insurrection, at such places therein as shall be designated by him, at such prices as shall be agreed on with the seller, not exceeding the market value thereof at the place of delivery, nor exceeding three-fourths of the market value thereof in the City of New York at the latest quotations known to the agent purchasing: Provided, That no part of the purchase money for any products so purchased shall be paid, or agreed to be paid, out of any other fund than that arising from property sold as captured or abandoned, or purchased and sold under provisions of this act. All property so purchased shall be forwarded for sale at such place or places as shall be designated by the Secretary of the Treasury, and the moneys arising therefrom, after payment of the purchase money and the other expenses connected therewith, shall be paid into the Treasury of the United States; and the accounts of all moneys so received and paid shall be rendered to, and audited by, the proper accounting officers of the Treasury."

The Secretary of the Treasury in the administration of the above section made certain regulations, among which he provided that agents appointed according to its provisions should confine their purchases

to cotton and that to meet its requirements they should receive all cotton so brought and forthwith return to the seller three-fourths thereof of the average grade of the whole, or retain out of the
17 price thereof the difference between three-fourths of the market price and the full market price in the City of New York. In further pursuance of the authority conferred by said section, the Secretary of the Treasury designated certain cities, among them the city of New Orleans, as purchasing places and appointed purchasing agents, among them the above-named Otis N. Cutler as before stated. His taking into his possession the cotton in question and the exaction from said firm of the value of one-fourth of the market price thereof is averred in the petition as heretofore stated.

The plaintiff bases her right to recover in this suit upon the above statutes to be construed in connection with section 162 of the Judicial Code, which is as follows:

"Sec. 162. The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June 1, 1865, under the provisions of the act of Congress approved March 12, 1863, entitled 'An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States,' and acts amendatory thereof, where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court; and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding."

As we understand the contention of the plaintiff, it is that in substance and effect one-fourth of her cotton was taken subsequent to June 1, 1865, and the proceeds thereof placed in the Treasury, and which fact gives her a cause of action in this court under said section.

In 1871 the Kouns firm before mentioned brought a suit in the Circuit Court for the Southern District of the State of New York against said Cutler to recover back the money so paid to him under the circumstances as before stated, and there recovered judgment for the same. The case went to the Supreme Court, where this judgment was reversed. The questions presented in that case were, (1) whether Cutler had lawfully collected one-fourth of the market value of the cotton in question; (2) whether the action was barred by section 7 of the act of March 3, 1863, 12 Stat., 755. Upon both of these questions the Supreme decided in favor of the defndants. There was some discussion in the case as affecting the first question as to the effect of certain proclamations of the President in their application to the States in which the cotton in question was raised and afterwards taken by Cutler, but that question is not believed to enter into this case, as we think it is conceded that the cotton and its disposal came within the provisions of section 8 of the act of July 2, 1864. In discussing the general question, the court said:

"We think the money sued for is the money of the United States. When the cotton reached New Orleans on June 6 it was subject to

an exaction of one-fourth its market value in New York. The owners had been allowed to bring in their cotton upon the implied promise and understanding that they would sell it to the Government for three-fourths the market price. Upon its arrival in New Orleans the rights of the Government in the cotton became
18 fixed. One-fourth its value was as much the property of the Government as the other three-fourths were the property of the defendants in error. No proclamation of the President could transfer the property of the Government to them. The purchasing agent, for the accommodation of defendants in error, had allowed them to pay the amount due the Government in three installments. The fact that the proclamation intervened between the payment of the first and the second installments could not relieve the defendants in error from the payment of money actually due to the United States. The President had no more power to exonerate them from the payment of the sum due than he has to relieve an importer from the payment of duties on his imported merchandise." 110 U. S. 720, 726, 727.

It is thus settled beyond question that the money which is sought to be recovered back in this case was legally exacted from the said copartnership firm and became the absolute property of the United States.

Section 162 above quoted provides for a recovery of judgment in this court for money in the Treasury arising from the proceeds of "property taken and sold" under the provisions of said act of March 12, 1863, and acts amendatory thereof. This implies the taking of such property and its sale without any intervention of the owner. Section 8 of the act of July 2, 1864, although nominally amendatory of the captured and abandoned property act of March 3, 1863, was in reality supplementary to the same and was for the purpose of enabling citizens in insurrectionary territory to dispose of their cotton to the Government and thus not be compelled to submit to having it seized by the Federal forces with the probability of never receiving anything for it. The one-fourth taken possession of under the authority of that act was not "taken" within the meaning of either the act of March 3, 1863, or said section 162, but was taken pursuant to an agreement authorized to be made by the act of July 2, 1864. Hence it follows that the money sought by the plaintiff to be recovered in this case was never "taken" from him within the meaning of any of those acts, but was paid to the Government pursuant to a lawful agreement and thus became the property of the Government subject to no trust or obligation of any kind.

It was said in Lincoln v. United States, 50 C. Cls., 70, 73: "The effect of section 162 is to revive the captured or abandoned property act so far as the remedies it provided are concerned and to again provide a forum for the enforcement of the rights declared in said section." It is pointed out further along that one material requirement was eliminated, namely, the proof of loyalty if the date of the seizure came within the terms of said section. Hence it follows that the decisions of this court and the Supreme Court as to the construction of the captured or abandoned property act have pertinent appli-

cation here. It has been unanimously held, both by this court and the Supreme Court, that the proceeds in the Treasury of property captured or abandoned and never confiscated was held in trust for such persons as were former owners as the Government might see fit to return it to, to the extent of their just claims. Padelford v. United States, 9 Wall., 531, Klein v. United States, 13 Wall., 128, Lincoln v. United States, 50 C. Cls., 70.

19 In none of these cases has it ever been intimated that anyone ever had a claim under that act for money either justly or wrongfully taken from them by any officer of the Government.

Let us suppose that Cutler instead of exacting one-fourth of the New York market price for the cotton in question had purchased it from the owner outright under the provisions of said section 8 of the act of July 2, 1864, and paid the owner therefor within 25 per cent of the New York market price, as he might have done. Would it be contended that any cotton had been taken from the owner, the proceeds of which were in the Treasury? And yet this is practically the effect of what was done in this case.

In conclusion, we do not think this claim comes either within the letter or the spirit of section 162 and the correlative statutes quoted. At the time of this transaction the Kouns firm could not have made any disposal of the cotton in question had it not been for the provisions of said section 8, it being insurrectionary territory. That section prescribed the method and the conditions upon which it might be sold to the Government. The firm complied with those conditions and were doubtless glad to do so. We do not think where one only complies with the law in his transaction with the Government in the sale of cotton and receives all that the law allows him he has any valid claim under section 162 of the Judicial Code.

It follows from the foregoing that the said demurrer should be sustained, with 40 days to amend her petition, and it is so ordered.

All concur.

20 VI. *Intervening Petition.*

(Filed January 15, 1917.)

To the Honorable the Court of Claims:

The claimant, Charles Schneidau, assignee in bankruptcy of George L. Kouns, respectfully represents:

That the George L. Kouns, named in the original petition in this case as one of the partners of the firm of George L. Kouns & Brother, a firm composed of said George L. Kouns and John Kouns, was in the year 1873 adjudicated a bankrupt in the District Court of the United States for the District of Louisiana, and on the 10th day of March in the year 1873, all his estate, real and personal was conveyed by the Register in Bankruptcy to Emery E. Norton as

21 assignee, under and by virtue of the bankrupt act of 1867.

That said George L. Kouns, the bankrupt, as well as said Emery E. Norton, his assignee, in bankruptcy, have long since de-

parted this life, leaving the bankrupt estate of said George L. Kouns without any person in existence qualified to represent it or to claim the assets due to it.

That on the 3d day of January in the year 1917, the District Court of the United States for the Eastern District of Louisiana, being the lawful successor of the District Court of the United States for the District of Louisiana, upon proper proceedings to that effect appointed your petitioner the assignee of said bankrupt estate of said George L. Kouns, by virtue of Section 5041 of the Revised Statutes of the United States, as kept in force by the act of June 7, 1878 (20 Stat. 99). A certified copy of the order appointing your petitioner as assignee as also of his bond as such are annexed to this petition as exhibits thereto.

That this intervening claimant is entitled to all the assets which were due to said George L. Kouns, bankrupt; and that the
22 claimant hereby adopts all the allegations of the petition of Isabel Kouns O'Pry, sole surviving descendant and sole heir of John Kouns, filed November 23, 1912, and jointly with her claims as therein prayed, under and by virtue of Section 162 of the Judicial Code of March 3, 1911, the sum of $30,777.50.

No other action has been had on said claim in Congress or by any of the departments; no person other than the claimant is the owner thereof or interested therein; no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; the claimant is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets; the claimant has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. The claimant is a citizen of the United States. And the claimant claims $30,777.50.

CHARLES SCHNEIDAU,
Assignee of Geo. L. Kouns, Bankrupt.

KING & KING,
Attorneys for Claimant.

23 STATE OF LOUISIANA,
Parish of Orleans, ss:

Charles Schneidau, being duly sworn, deposes and says:

I am the claimant in this case. I have read the above petition, and the matters therein stated are true to the best of my knowledge, information, and belief.

CHARLES SCHNEIDAU.

Subscribed and sworn to before me this 10th day of January, 1917.

[SEAL.] GEO. MONTGOMERY,
Notary Public.

24 *Exhibits to Petition.*

In the District Court of the United States for the Eastern District of Louisiana.

In Bankruptcy.

In the Matter of GEORGE L. KOUNS, Bankrupt.

The Court has considered the petition of Margaret F. Kouns, Bettie A. Kouns Burt, Grace L. Kouns Barr, Maggie Bell Kouns Agurs, Clara L. Kouns Turner and Perle Kouns Smith in the above matter, numbered 1291 of the records of the District Court of the United States for the Eastern District of Louisiana, praying for the appointment of a new or substituted Assignee.

And the Court finding that according to the records on file in said Court, under the bankrupt act of the United States of March 2, 1867, said George L. Kouns was adjudged a bankrupt in the District Court of the United States for the Eastern District of Louisiana, and on the 7th day of April in the year 1873, an assignment was made by the Register in Bankruptcy of said Court of
25 all the property and effects of said George L. Kouns to Emery E. Norton as Assignee, in trust, nevertheless, for the use and purposes with the powers and subject to the conditions and limitations set forth in said act of Congress, and that said Emery E. Norton is now dead and there is no acting Assignee of the bankrupt estate of said George L. Kouns, and that in order to prosecute such claims as may exist in favor of said bankrupt estate it is necessary that a new or substituted Assignee of said George L. Kouns be appointed.

Now, therefore, under the authority in the Court vested by law, it is ordered that Charles Schneidau be and he is hereby appointed as Assignee of said George L. Kouns, Bankrupt, to fill the vacancy caused by the death of said Emery E. Norton, former Assignee of said bankrupt, with power to prosecute, receive and collect any and all claims to which said bankrupt or his estate may have
26 been or may be entitled and to distribute the proceeds that may be realized to the proper parties entitled thereto under the further orders of this Court as fully as could have been done by said Emery E. Norton, the original Assignee, or by said George L. Kouns, upon the execution by the said Charles Schneidau of bond in the sum of $1,000.00.

New Orleans, January 3rd, 1917.

(Signed) RUFUS E. FOSTER,
Judge United States District Court.

Clerk's Office.

I certify the foregoing to be a true copy of the original record in this office.

Witness my hand and the seal of said Court, at the City of New Orleans, La., this the 3rd day of January, 1917.

H. J. CARTER, *Clerk.*

27 In the District Court of the United States for the Eastern District of Louisiana.

In Bankruptcy.

In the Matter of GEORGE L. KOUNS, Bankrupt.

Bond of Assignee.

Know all men by these presents: That we, Charles Schneidau, of New Orleans, as principal, and Oscar Schneidau, Jr., of New Orleans, as sure*ties*, are held and firmly bound unto the United States of America in the sum of One Thousand dollars, in lawful money of the United States for which payment, well and truly to be made, we b-nd ourselves, and our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this 4th day of January, A. D. 1917.

The condition of this obligation is such, that whereas the above named Charles Schneidau was, on the 3rd day of January, A. D. 1917, appointed Assignee to fill a vacancy as Assignee caused

28 by the death of Emery E. Norton, former Assignee in the case pending in bankruptcy in said court, wherein George L. Kouns is the bankrupt, said case being No. 1291 of the docket of the United States District Court for the Eastern District of Louisiana, in proceedings held under the act of Congress of March 10, 1873, and he, the said Charles Schneidau, has accepted said trust with all the duties and obligations pertaining thereto:

Now, therefore, if the said Charles Schneidau, Assignee as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said Assignee, then this obligation to be void; otherwise, to remain in full force and virtue.

CHARLES SCHNIEDAU.
OSCAR SCHNEIDAU, JR.

Signed and sealed in presence of
JOHNSTON ARMSTRONG.
JAMES E. ZUNTS.

29 Clerk's Office.

I certify the foregoing to be a true copy from the original record of this office.

Witness my hand and the seal of said Court, at the City of New Orleans, La., this the 4th, day of January, 1917.

H. J. CARTER, *Clerk.*

30 VII. *Stipulation.*

(Filed May 28, 1917.)

In the Court of Claims.

No. 31940.

ISABEL KOUNS O'PRY, Sole Surviving Descendant and Sole Heir of John Kouns, Deceased,

v.

THE UNITED STATES.

CHARLES SCHNEIDAU, Substituted Assignee in Bankruptcy of George L. Kouns, Intervening Petitioner,

v.

THE UNITED STATES.

Stipulation.

It is hereby stipulated and agreed that this cause be and it is hereby submitted to the court on the demurrer filed by the United States January 3, 1916, to the petition of Isabel Kouns O'Pry, which it is stipulated shall be treated as also applying to the cause of the intervening petitioner Charles Schneidau, substituted assignee in bankruptcy, of George L. Kouns; and that the judgment of
31 the court on the demurrer shall be final, the respective claimants hereby waiving all right to amend their petitions.

KING & KING,
Attorneys for Claimants.
W. F. NORRIS,
Attorney for the United States.

W. F. N.

No objection.
HUSTON THOMPSON,
Assistant Attorney-General.
J. W. T.

32 VIII. *Order for Judgment.*

(Filed June 11, 1917.)

It is Ordered by the Court that the petition herein be and the same is hereby amended by making the assignee in bankruptcy of George L. Kouns a party claimant.

The Claimants having adopted the averments of the original petition and not amending it otherwise than as above stated the case was submitted upon the demurrer of the defendants to the petition as amended. It is adjudged, ordered and decreed that the defendant's demurrer to the petition as amended be and the same is hereby sustained, and the claimants declining to plead further the petition is dismissed.

By THE COURT.

33 IX. *Application for and Order Allowing Appeal.*

(Filed June 14, 1917.)

In the Court of Claims.

No. 31940.

ISABEL KOUNS O'PRY, Surviving Descendant and Sole Heir of John Kouns,

v.

THE UNITED STATES.

CHARLES SCHNEIDAU, Substituted Assignee in Bankruptcy of George L. Kouns,

v.

THE UNITED STATES.

Now come the claimants, Isabel Kouns O'Pry, surviving descendant and sole heir, etc., and Charles Schneidau, substituted assignee in bankruptcy, etc., and hereby give notice of and apply for an appeal to the Supreme Court of the United States from the judgment by this court dismissing their petition, entered on the 11th day of June, 1917.

KING & KING,
Attorneys for Claimant-.

Ordered: That the appeal be allowed as prayed for.
June 14, 1917.

By THE COURT.

34 In the Court of Claims.

No. 31940.

ISABEL KOUNS O'PRY, Surviving Descendant and Sole Heir of John Kouns,

v.

THE UNITED STATES.

CHARLES SCHNEIDAU, Substituted Assignee in Bankruptcy of George L. Kouns,

v.

THE UNITED STATES.

I, Samuel A. Putman, Chief Clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled causes, of the opinion of the court on the demurrer, of the final judgment of the court, and application of the claimants for and allowance of the appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of the Court of Claims this 22" day of June, A. D. 1917.

[Seal Court of Claims.]

SAML. A. PUTMAN,
Chief Clerk Court of Claims.

Endorsed on cover: File No. 26,018. Court of Claims. Term No. 551. Isabel Kouns O'Pry, sole surviving descendant and sole heir of John Kouns, surviving partner of George L. Kouns and John Kouns, and Charles Schneidau, substituted assignee in bankruptcy of George L. Kouns, appellants, vs. The United States. Filed June 26th, 1917. File No. 26,018.

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In the Supreme Court of the United States.

OCTOBER TERM, 1918.

ISABEL KOUNS O'PRY, SOLE SURVIVING descendant and sole heir of John Kouns, surviving partner of George L. Kouns and John Kouns, and Charles Schneidau, substituted assignee in bankruptcy of George L. Kouns, appellants.

v.

THE UNITED STATES.

No. 216.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is an appeal from a judgment of the Court of Claims sustaining defendant's demurrer to the petition. The question is whether the petition states a case under section 162 of the Judicial Code and certain other applicable statutes.

THE FACTS.

The plaintiffs sue as the representatives of the firm of Kouns & Kouns, formerly engaged in the

cotton business in Louisiana. They allege that on June 6, 1865, Messrs. Kouns & Kouns brought to New Orleans from Texas and from points in Louisiana west of the Mississippi River, a quantity of cotton said to have been worth $123,110.

Under section 5 of the act of July 13, 1861 (12 Stat. 257), the President had been empowered to proclaim that the inhabitants of any State, or part of a State, in rebellion against the United States were in a state of insurrection and it was provided that—

> thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States (should) cease and be unlawful so long as such condition of hostility (should) continue.

It was also provided that goods coming from sections so declared to be in insurrection into loyal territory should be subject to forfeiture. The President was, however, empowered to license the intercourse, otherwise forbidden, to be carried on under regulations prescribed by the Secretary of the Treasury.

By proclamation dated August 16, 1861 (12 Stat. 1262), the President declared Louisiana and Texas to be in insurrection. Such parts thereof as might from time to time be occupied by the forces of the United States were excepted from the proclamation. New Orleans was so occupied from April 26, 1862, until the close of the war, and was therefore excepted from the operation of the nonintercourse act.

On March 12, 1863, the "Captured and Abandoned Property Act" (12 Stat. 820), was passed. So far as material, it is as follows:

> *Be it enacted, etc.*, That it shall be lawful for the Secretary of the Treasury, from and after the passage of this act, as he shall from time to time see fit, to appoint a special agent or agents to receive and collect all abandoned or captured property in any State or Territory, or any portion of any State or Territory, of the United States designated as in insurrection against the lawful Government of the United States by the proclamation of the President of July first, eighteen hundred and sixty-two: *Provided, etc.* (the proviso not being here material).
>
> SEC. 2. That any part of the goods or property received and collected by such agent or agents may be appropriated to public use on due appraisement and certificate thereof, or forwarded to any place of sale within the loyal States, as the public interests may require; and all sales of such property shall be at auction to the highest bidder and the proceeds thereof shall be paid into the Treasury of the United States.
>
> SEC. 3. * * * Any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the court of claims; and on proof to the satisfaction of said court of his ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, to receive the residue of such proceeds, after the

> deduction of any purchase money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof.

On July 2, 1864, another statute was passed (13 Stat. 375) which was entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States and to provide for the collection of captured and abandoned property, etc." Section 8 of that act is as follows:

> SEC. 8. That it shall be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of States declared in insurrection, at such places therein as shall be designated by him, at such prices as shall be agreed on with the seller, not exceeding the market value thereof at the place of delivery, nor exceeding three-fourths of the market value thereof in the city of New York at the latest quotations known to the agent purchasing: *Provided*, That no part of the purchase money for any products so purchased shall be paid, or agreed to be paid, out of any other fund than that arising from property sold as captured, or abandoned, or purchased and sold under the provisions of this act. All property so purchased shall be forwarded for sale at such place or places as shall be designated by the Secretary of the Treasury, and the moneys arising therefrom, after payment of the purchase money and the other expenses connected therewith, shall be paid into the

> Treasury of the United States; and the accounts of all moneys so received and paid shall be rendered to, and audited by, the proper accounting officers of the Treasury.

New Orleans was one of the cities designated as places of purchase by the Secretary of the Treasury, who by regulations dated May 9, 1865, directed his agents, in pursuance of the act of July 2, 1864, to receive all cotton brought into such places of purchase and forthwith to return to the seller three-fourths thereof or to retain out of the price thereof the difference between three-fourths the market price and the full price thereof in the city of New York.

Such were the statutes and the regulations when the Messrs. Kouns brought their cotton to New Orleans from points west of the Mississippi. Otis W. Cutler was the Government's agent at New Orleans. He took the cotton into possession and, according to the petition, "refused to release the same or allow the owners to have any custody or control thereof until they paid him one-fourth the market value of said cotton." The owners did pay "under protest," and their cotton was released to them. The payment was made in instalments on June 12, 15, and 20, 1865.

On June 24, 1865, the President made a proclamation in which, for the first time, "restrictions upon intercourse and upon the purchase and removal of products of States and parts of States * * * heretofore declared in insurrection, lying west of the Mississippi * * * (were) annulled and * * *

removed." (13 Stat., 769.) A similar proclamation as to territory east of the Mississippi River was made June 13, 1865.

In 1871 the Messrs. Kouns began a suit against Cutler upon the theory that his action with respect to this cotton was without warrant of law. This court (110 U. S., 720) reversed a judgment for the plaintiffs, and the suit was then dismissed.

The present suit was brought under section 162 of the Judicial Code enacted March 3, 1911. (36 Stat., 1139.) That section is as follows:

> SEC. 162. The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June 1, 1865, under the provisions of the act of Congress approved March 12, 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," and acts amendatory thereof where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding.

THE ISSUE.

The appellant contends that the money paid by the Messrs. Kouns was "property taken under the provisions of" an act "amendatory of" the act of

March 12, 1863; that, in contemplation of law such "property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States"; and therefore that they are entitled to invoke the jurisdiction conferred, under these circumstances by section 162.

The United States denies these contentions severally. It says that section 162 has no application to the situation disclosed by the petition. The issue is thus made up.

ARGUMENT.

I.

Section 162 of the Judicial Code does not apply because the act of July 2, 1864, under which the money was paid, was not amendatory of the act of March 12, 1863.

This is the first of the formidable difficulties which confront the plaintiff. The act of July 2, 1864, does not amend the act of March 12, 1863. It is not even so entitled but is stated to be "in addition to" the several acts, etc. It deals with a different subject matter in a wholly different way. Its only connection is in the provision that the funds created by the act of 1863 may be used in the transactions authorized. If it amends anything it amends the act of July 13, 1861, under which the products of States in insurrection were subject to forfeiture if brought into loyal territory. Had Congress intended to include within the intendment of section 162, Judicial Code, the act of 1864, it would have used other and more specific language. This becomes increas-

ingly apparent when the applicability of the remaining language to cases governed by the act of 1863 is contrasted with its inapplicability to those arising under the act of 1864.

II.

Section 162 of the Judicial Code does not apply because no property was taken and sold and its net proceeds paid into the Treasury.

It is necessary to claimant's case that these circumstances exist. They would exist in cases arising under the act of 1863, for that is what that act directed. This aptness of language lends force to the conclusion that it was to dealings under that act and only to such dealings that section 162 was meant to apply. It applies to dealings under the act of 1864 only by subjecting it to very considerable strain. And there is a conclusive reason why the language should not be subject to strain for the purpose of bringing in a case like this.

III.

Section 162 of the Judicial Code is without application to dealings under the act of July 2, 1864.

The fundamental difficulty with plaintiff's case is a failure to apprehend or to apply the difference in the legal effect of dealings with property under the act of March 12, 1863, and of dealings under the act of July 2, 1864. In one case the former owner was left with substantial rights in what had passed into the possession of the Government or in its net proceeds. These rights were specifically recognized by section 3 of the act of March 12, 1863. And it was

in terms decided by this court (*Padelford* v. *United States*, 9 Wall. 53; *Olein* v. *United States*, 13 Wall. 128) that the United States never took the beneficial interest in such property or its proceeds, but held it in trust for such former owners as at some time the Government might see fit to return it.

In so far as such claims were barred by limitation in 1911, action of Congress was necessary to their enforceability though not to their existence. It was to give to those having such rights a remedy and a forum that section 162 was passed. For that purpose its language was apt and its application plain without aid from artificial construction.

But the legal situation was wholly different as to the act of July 2, 1864. It is concisely shown in the language of this court in *Cutler* v. *Kouns*, 110 U. S. 720. Speaking of the very cotton now in question, the court pointed out that the owners were allowed to bring their cotton in only upon an implied promise and understanding that they would sell it to the Government for three-fourths the market price, and added (726):

> Upon its arrival in New Orleans the rights of the Government in the cotton became fixed. One-fourth of its value was as much the property of the Government as the other three-fourths were the property of the defendants in error. No proclamation of the President [1] could transfer the property of the Government to them.

[1] This refers to the proclamation of June 13, 1865. It had already been said (724, 5) that its terms made it inapplicable to this cotton.

The absolute title to this money therefore passed to the Government as a result of a perfectly voluntary transaction, which was closed for all legal intents and purposes when this cotton arrived in New Orleans, June 6, 1865. No legal or moral claim of any sort remained in the former owners as to the money which they paid to the Government in exchange for the privilege of bringing this cotton into loyal territory and there disposing of it.

In fact, the proposition that nothing was taken under the act of 1863, or any act amendatory thereof, may be restated more simply. Nothing was "taken"—in the sense of seized or exacted—at all. There is, therefore, no room for the application of section 162. *A fortiori* there is no reason for resorting to strained constructions and interpretations to give it a semblance of application.

IV.

Appellants' appeal ad misericordiam is without merit.

To this appellants answer only by an appeal to considerations of mercy. They say this is to "keep the word of promise to the ear and break it to the hope"—an argument which would be more persuasive had the promise first been established. And they argue that they are entitled to relief because they say (p. 18) that if all the cotton had been seized they would have been entitled to relief, and therefore it must follow that they are entitled to relief where their loss was less serious.

One difficulty with this is that it rests on a false assumption. If all their cotton had been seized the

seizure would not have been under the act of March 12, 1863, or any act amendatory thereof. The "Captured and Abandoned Property Act" never applied to New Orleans, which, as already noticed, was in the possession of the Union forces when it was passed and remained so till the end of the war. Had the property been seized it would have been seized under the act of July 13, 1861. To such a seizure section 162 is without application.

But the very statement of the appeal to mercy demonstrates its lack of merit. The owners did not give up their cotton and take their chances of ever getting any payment for it. Instead, they voluntarily accepted the offer made by the Government in the act of 1864. Except for that offer the owners could have made no disposal of their cotton. A way to dispose of it was opened to them, namely, that they should bring it to New Orleans, turn over to the Government one-quarter or its money equivalent, and dispose of the rest as they pleased. They accepted that offer and were no doubt glad to do so. They secured then and there what the law allowed. Their case does not seem to call for extreme action *ad misericordiam*.

CONCLUSION.

The judgment of the Court of Claims sustaining the demurrer and, in accordance with the stipulation (R. 15), dismissing the bill, should be affirmed.

LARUE BROWN,
Assistant Attorney General.

JANUARY, 1919.

○

Supreme Court of the United States.

October Term, 1918.

ISABEL KOUNS O'PRY, sole surviving descendant and sole heir of JOHN KOUNS, surviving partner of GEORGE L. KOUNS and JOHN KOUNS, and CHARLES SCHNEIDAU, substituted assignee in bankruptcy of GEORGE L. KOUNS, *Appellants*,
v.
THE UNITED STATES.
} No. 216.

Appeal from the Court of Claims.

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BRIEF FOR APPELLANT.

I. STATEMENT OF THE CASE.

Petition, Demurrer, and Judgment.

Isabel Kouns O'Pry filed her petition in the Court of Claims November 23, 1912 (rec. pp. 1–4), setting forth facts which may be abbreviated as follows:

She is the sole surviving descendant and heir of John Kouns, surviving partner of a firm composed of George L. Kouns and John Kouns, both deceased, doing business during and after the Civil War in the State of Louisiana, and has been recognized as such and put into possession of the estate of her father by order of the Civil District Court for the Parish of Orleans, State of Louisiana, set out in full (pp. 5, 6).

On June 6, 1865, said George L. and John Kouns were owners of 900 bales of cotton, which on that day arrived at New Orleans, hostilities being then over. Its value was $123,110.

By regulations of the Secretary of the Treasury of May 9, 1865, certain purchasing agents of the United States were designated to receive all cotton, return to the owner three-fourths thereof or sell the same, and retain out of the price the difference between three-fourths of the market price and the full price thereof in the City of New York.

On the arrival of the cotton in question at New Orleans, the United States purchasing agent there took it into his possession and refused to release the same or allow the owners to have any custody or control thereof until they paid to him one-fourth of the market value of the cotton, being the sum of $30,777.50, which amount they paid under protest,

part on June 12 and the balance June 15 and 20, 1865. Mrs. O'Pry claims to recover this sum in this suit, under the provisions of Sec. 162 of the Judicial Code (*post*, pp. 8, 9).

The United States demurred to the petition (record, p. 6). The court in an opinion by Judge Barney (rec. p. 7–11) sustained the demurrer. The case is reported 51 C. Cls. 111.

PARTIES.

The court, in its opinion (paragraph near foot p. 7 of record), while referring to the recognition of Mrs. O'Pry by the civil district court as the sole heir of John Kouns as entitling her to recover for his half of the money paid, expressed some doubt "whether such right would entitle her to bring a suit for such entire copartnership claim."

In view of this doubt the estate of the other partner, George L. Kouns, was brought in by intervening petition (rec. pp. 11, 12) of his assignee in bankruptcy. George L. Kouns was adjudicated a bankrupt in 1873 under the bankrupt act of 1867, and afterwards died, as did also the assignee in bankruptcy then appointed. By virtue of Sec. 5041 of the Revised Statutes of the United States kept in force as to pending or adjudged cases by the act of June 7, 1878 (20 Stat. 99) repealing the bankrupt act of 1867, a substituted assignee was appointed by the U. S. District Court for the Eastern District of Louisiana, and this assignee filed an intervening petition representing the share of George L. Kouns. The order of substitution of the present assignee is found at page 13 of the record. By stipulation the demurrer to the petition of Mrs. O'Pry was treated as also applying to the case of the intervening petitioner, Charles Schneidau, substituted assignee in bankruptcy of George L. Kouns, and the respective

claimants waived all right to amend their petitions (rec. foot p. 15). The court entered final judgment against both claimants (rec. top p. 16) and from this judgment both claimants appealed to this court (rec. foot p. 16).

STATUTES.

The statutes to be considered are summarized in the opinion of the court (rec. pp. 7–9), but may best be given here in their full texts.

Act of July 13 1861 (12 Stat. 255, 257):

"An Act further to provide for the Collection of Duties on Imports, and for Other Purposes.

"Sec. 5. *And be it further enacted*, That whenever the President, in pursuance of the provisions of the second section of the act entitled 'An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions, and to repeal the act now in force for that purpose,' approved February 28, 1795, shall have called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when said insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof in which said combination exists, nor such insurrection suppressed by said State or States, then and in such case it may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such State, or any section or part thereof, where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from

said State or section into the other parts of the United States, and all proceeding to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States: *Provided, however*, That the President, may, in his discretion, license and permit commercial intercourse with any such part of said State or section, the inhabitants of which are so declared in a state of insurrection, in such articles, and for such time, and by such persons, as he, in his discretion, may think most conducive to the public interest; and such intercourse, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury. And the Secretary of the Treasury may appoint such officers at places where officers of the customs are not now authorized by law as may be needed to carry into effect such licenses, rules, and regulations; and officers of the customs and other officers shall receive for services under this section, and under said rules and regulations, such fees and compensation as are now allowed for similar service under other provisions of law."

Act of March 12, 1863 (12 Stat. 820):

"An Act to provide for the collection of abandoned Property and for the Prevention of Frauds in insurrectionary Districts within the United States.

"*Be it enacted*, etc., That it shall be lawful for the Secretary of the Treasury, from and after the passage of this act, as he shall from time to time see fit, to appoint a special agent or agents to receive and collect all abandoned or captured property in any State or Territory, or any portion of any State or Territory, of the United States, designated as in insurrection against the lawful government of the United States by the proclamation of the President of July 1, 1862: *Provided*, That such property shall not include any kind or description which has been used, or which was intended to be used, for waging or carrying on war against the United States, such as arms, ordnance,

ships, steamboats, or other water craft, and the furniture, forage, military supplies, or munitions of war.

"Sec. 2. *And be it further enacted*, That any part of the goods or property received or collected by such agent or agents may be appropriated to public use on due appraisement and certificate thereof, or forwarded to any place of sale within the loyal States, as the public interests may require; and all sales of such property shall be at auction to the highest bidder, and the proceeds thereof shall be paid into the Treasury of the United States.

"Sec. 3. *And be it further enacted*, That the Secretary of the Treasury may require the special agents appointed under this act to give a bond with such securities and in such amount as he shall deem necessary, and to require the increase of said amounts, and the strengthening of said security, as circumstances may demand; and he shall also cause a book or books of account to be kept, showing from whom such property was received, the cost of transportation, and proceeds of the sale thereof.

"And any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims; and on proof to the satisfaction of said court of his ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, to receive the residue of such proceeds, after the deduction of any purchase-money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof."

Act of July 2, 1864 (13 Stat. 375):

"An Act in addition to the several Acts concerning Commercial Intercourse between loyal and insurrectionary States, and to provide for the Collection of captured and abandoned Property, and the Prevention of Frauds in States declared in insurrection.

"Sec. 8. *And be it further enacted*, That it shall be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any products of States declared in insurrection, at such places therein as shall be designated by him, at such prices as shall be agreed on with the seller, not exceeding the market-value thereof at the place of delivery, nor exceeding three-fourths of the market-value thereof in the city of New York at the latest quotations known to the agent purchasing: *Provided*, That no part of the purchase money for any products so purchased shall be paid, or agreed to be paid, out of any other fund than that arising from property sold as captured or abandoned, or purchased and sold under the provisions of this act. All property so purchased shall be forwarded for sale at such place or places as shall be designated by the Secretary of the Treasury, and the moneys arising therefrom, after payment of the purchase money and the other expenses connected therewith, shall be paid into the Treasury of the United States; and the accounts of all moneys so received and paid shall be rendered to, and audited by, the proper accounting officers of the Treasury.

"Sec. 11. *And be it further enacted*, That the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary to secure the proper and economical execution of the provisions of this act, and shall defray all expenses of such execution from the proceeds of fees imposed by said rules and regulations, of sales of captured and abandoned property, and of sales hereinbefore authorized."

From Judicial Code of March 3, 1911, Sec. 162 (36 Stat. 1139; Compiled Statutes, U. S., 1916, Sec. 1153):

"The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June 1, 1865, under the provisions of the Act of Congress approved March 12,

1863, entitled 'An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States' and Acts amendatory thereof where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding."

REGULATIONS.

(These regulations are taken from an officially published document of 1872, entitled "Acts of Congress and rules and regulations prescribed by the Secretary of the Treasury, in pursuance thereto, with the approval of the President, concerning commercial intercourse with and in States and parts of States declared in insurrection, captured, abandoned, and confiscable property, the care of freedmen, and the purchase of products of insurrectionary districts on Government account."

[P. 131.] *Executive Order.*

EXECUTIVE CHAMBER,
Washington, April 29, 1865.

Being desirous to relieve all loyal citizens and well-disposed persons residing in insurrectionary States from unnecessary commercial restrictions, and to encourage them to return to peaceful pursuits, *it is hereby ordered:*

I. That all restrictions upon internal, domestic, and coastwise commercial intercourse be discontinued in such parts of the States of Tennessee, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, and so much of Louisiana as lies east of the Mississippi River, as shall be embraced within the lines of national military occupation,

Restrictions on trade in parts of States lately in rebellion removed.

excepting only such restrictions as are imposed by acts of Congress, and regulations in pursuance thereof, prescribed by the Secretary of the Treasury, and approved by the President; and excepting also from the effect of this order the following articles contraband of war, to wit: Arms, ammunition, all articles from which ammunition is manufactured, gray uniforms and cloth, locomotives, cars, railroad iron, and machinery for operating railroads, telegraph wires, insulators, and instruments for operating telegraphic lines.

II. That all existing military and Naval orders in any manner restricting internal, domestic, and coastwise commercial intercourse and trade with or in the localities above named be, and the same are hereby, revoked; and that no military or naval officer in any manner interrupt or interfere with the same, or with any boats or other vessels engaged therein, under proper authority, pursuant to the regulations of the Secretary of the Treasury.

ANDREW JOHNSON.

TREASURY DEPARTMENT, *May 9, 1865.*

With a view of carrying out the purposes of the Executive, as expressed in his Executive order, bearing date April 29, 1865, "to relieve all loyal citizens and well-disposed persons residing in insurrectionary States from unnecessary commercial restrictions, and to encourage them to return to peaceful pursuits," the following regulations are prescribed, and will hereafter govern commercial intercourse in and
[P. 132.] between the States of Tennessee, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, and Louisiana east of the Mississippi River, heretofore declared in insurrection, and the loyal States:

[P. 133.] *Shipment of Products of an insurrectionary State.*

IX. All cotton not produced by persons with their own labor, or with the labor of freedmen or others employed and paid by them, must, before shipment to

any port or place in a loyal State, be sold to and resold by an officer of the Government specially appointed for the purpose, under regulations prescribed by the Secretary of the Treasury and approved by the President; and, before allowing any cotton or other product to be shipped, or granting clearance for any vessel, the proper customs officer, or other person acting as such, must require from the purchasing agent or the internal-revenue officer a certificate that cotton proposed to be shipped has been resold by him, or that twenty-five per cent of the value thereof has been paid to such purchasing agent in money, and that the cotton is thereby free from further fee or tax. If the cotton proposed to be shipped is claimed and proved to be the product of a person's own labor, or of freedmen or others employed and paid by them, the officer will require that the shipping fee of three cents per pound shall be paid or secured to be paid thereon.

[P. 134.] *Records to be kept.*

XII. Full and complete accounts and records must be kept by all officers acting under these regulations of their transactions under them, in such manner and form as shall be prescribed by the Commissioner of Customs.

Loyalty a requisite.

XIII. No goods shall be sold in an insurrectionary State by or to, nor any transaction held with, any person or persons not loyal to the Government of the United States.

Proof of loyalty must be the taking and subscribing the following oath, or evidence to be filed that it, or one similar in purport and meaning, has been taken, viz:

I,—— ——, do solemnly swear, in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and all laws made in pursuance thereto.

Former regulations revoked.

These regulations shall take effect and be in force on and after the 10th day of May, 1865, and shall supersede all other regulations and circulars heretofore prescribed by the Treasury Department concerning commercial intercourse between loyal and insurrectionary States, all of which are hereby rescinded and annulled.

HUGH MCCULLOCH,
Secretary of the Treasury.

EXECUTIVE CHAMBER,
Washington City, May 9, 1865.

The foregoing rules and regulations concerning commercial intercourse with and in States and parts of States declared in insurrection, prescribed by the Secretary of the Treasury in comformity with acts of Congress relating thereto, having been seen and considered by me, are hereby approved.

ANDREW JOHNSON.

II. ASSIGNMENT OF ERROR.

The appellant hereby assigns the following as error:

That the Court of Claims held that Section 162 of the Judicial Code of March 3, 1911, did not apply to the money paid as alleged in the petition by George L. Kouns and John Kouns and could not be recovered in said Court of Claims under said section and therefore sustained the demurrer to the petitions of the several claimants and gave judgment dismissing their petitions; whereas, said Court of Claims should have held that said Section 162 authorized and required that the amount paid by said George L. Kouns and John Kouns under protest, in order to secure the release of their cotton, and paid into the Treasury of the United States, was a proper subject of claim under said Section 162, and should have overruled the demurrer and given judgment in favor of the claimants as representatives

of the estates of George L. Kouns and John Kouns for the amount thereof as claimed in the petitions.

III. BRIEF OF ARGUMENT.

I. Character in which Claimants Appear.

The representative character of the respective claimants was not contested in the court below and probably will not be here.

The right of Mrs. O'Pry as sole heir of her father, John Kouns, as recognized by the civil District court of the Parish of New Orleans and as such formally put into possession of his estate, to maintain this action, is shown by the following:

Civil Code of Louisiana, Art. 945. "The second effect of this right is to authorize the heir to institute all the actions, even possessory ones, which the deceased had a right to institute, and to prosecute those already commenced. For the heir, in everything, represents the deceased, and is of full right in his place as well for his rights as his obligations."

Code of Practice of Louisiana, Art. 113. "Suits by Heirs. As the right of action may be transmitted, it passes to the heirs; therefore the heirs of the deceased may sue the debtor of the succession in the same manner as the deceased himself could have done."

See also Civil Code of Louisiana, Secs. 870, 871, 940, 942, 946, 947; *Addison* v. *New Orleans Savings Bank*, 15 La. 527; *LePage* v. *New Orleans Gas Light & Banking Co.* 7 Rob. 183; *Bryan* v. *Atchison*, 3 La. Ann. 462; Succession of Story, 3 La. Ann. 502; Succession of Dupuy, 4 La. Ann. 572; Succession of Vick, 19 La. Ann. 75; *Brashear* v. *Connor*, 29 La. Ann. 347; Succession of Walker, 32 La. Ann. 321; Succession of Hebert, 33 La.

Ann. 1099; Succession of Baumgarden, 35 La. Ann. 127, 132.

The application of the Louisiana law of succession to claims against the United States has been fully recognized by both this court and the Court of Claims. *Taylor* v. *Bemiss*, 110 U. S. 42; *Godwin* v. *United States*, 13 C. Cls. 579; *Ramsay* v. *United States*, 21 C. Cls. 443, 120 U. S. 214, 216, 217.

The jurisdiction of a United States District Court in Bankruptcy to substitute an assignee in bankruptcy at any length of time after the granting of the original adjudication in bankruptcy where necessary to enable a bankrupt estate to be properly represented is shown by the following decisions:

In Re King, 3 Fed. 839, a United States District Court in 1880 took some proceedings under the bankrupt act of 1841. That act was repealed in 1843, but with a proviso saving all pending cases. Of course in 1881 not only had the bankrupt act of 1841 been repealed and out of existence for nearly forty years, but another bankrupt act, that of 1867, had come and gone. The court, however, said, p. 842:

"It is urged that after the discharge of the bankrupt, and the final disposition and distribution of his estate, the proceeding has reached its final consummation, and the power of the court to pass any order in the case is taken away by this proviso. I think, however, that this proviso clearly preserves in full force all the power and authority which under the bankrupt law of 1841, this court had to act in any case commenced before the passage of the repealing act. Full force is to be given to all the language used, and the first clause distinctly provides that the repeal shall not *affect* any pending case; and the last clause, giving express authority to continue to final consummation all such cases, though perhaps unnecessary, was not designed to be restrictive of the prior clause. Nor

in a large and proper sense, is a case carried to its final consummation so long as there remains any order, decree, or action for the court, in the proper and usual exercise of its jurisdiction in like cases, to enter or to take, or any redress or relief to be given to any party or person properly applying to the court therefor in the case."

In Re Mahoney, 5 Fed. 518, was also under the bankrupt act of 1841, of which the party had taken advantage in 1842. No proceedings were taken in the case from 1845 until 1879. The assignee in bankruptcy having died by that time, some creditors filed a petition for the appointment of a new assignee. The judge of the District Court for the Eastern District of Pennsylvania, where the case occurred, said, p. 520:

"I have concluded to appoint an assignee. Evidence of the existence of unadministered assets has been produced and notwithstanding the important questions of law and fact to which attention has been called, and which must be passed upon before the right of the assignee to recover can be determined, I believe the creditors should have an opportunity of proceeding in the case, and thus testing their rights. The questions raised in answer to the application can not properly be considered at this time. Anxious as I have felt to avoid any action that might promote unnecessary litigation, I am satisfied after a very deliberate consideration of the case, that the prayer of the petitioner should be granted, and the creditors thus allowed to proceed to recover the alleged assets if they believe the circumstances warrant it."

2. Merits of the Case.

This claim is made under Sec. 162 of the Judicial Code (quoted *ante*, pp. 8, 9). The section brings claims within its terms under the following conditions:

1. Claims of those whose property was taken under

the provisions of the act of March 12, 1863 (quoted *ante*, pp. 6, 7), and acts amendatory thereof.

2. Where the property was taken subsequently to June 1, 1865.

3. Where the property was sold and the net proceeds placed in the Treasury.

The petition sets forth a date after June 1, 1865.

The questions arising are, whether the money paid by the decedent was "property taken" under the act of 1863 or any act amendatory thereof; and whether within the meaning of that act property so taken was sold and the net proceeds placed in the Treasury.

The act of July 3, 1864 (*ante*, pp. 7, 8), in its title couples together the acts concerning commercial intercourse and providing for the collection of captured and abandoned property and declares that that act is in addition to the several acts on the subject. It treats these acts as constituting a whole on the subject of property rights in the seceded States. Section 8 of the act of 1863 (*ante*, p. 8) directs that agents may, by authority of the Secretary of the Treasury, purchase products of insurrectionary States, with the proviso that no part of the purchase money shall be paid "out of any other fund than that arising from property sold as captured or abandoned, or purchased and sold under the provisions of this act." This shows that the captured and abandoned property fund is to be diminished or increased by proceedings under this section.

The section is thus clearly amendatory of the act of March 12, 1863. Any property seized under it was seized under the act of 1863 or acts amendatory thereof, and the case is therefore within the terms of Sec. 162 of the Judicial Code. Was money taken and paid into the Treasury "property taken"?

It was certainly so treated by the Court of Claims under the original abandoned property act in *Mezeix* v. *United States*, 6 C. Cls. 232. There money seized by an officer of the United States and paid over into the Treasury was treated by the Court of Claims as property taken and was held to be recoverable under the captured and abandoned property legislation.

Thus this claim comes literally and expressly within Sec. 162 of the Judicial Code.

The petition, Par. 8 (rec. p. 3), refers to an action brought by George L. Kouns and John Kouns in their lifetime against Otis N. Cutler, Treasury Agent, who made exactions of one-fourth of the appraised value of the cotton, and to the action of the Circuit Court for the Southern District of New York, and of this court thereon. The decision of this court will be found 110 U. S. 720. It is referred to, and in part quoted, by the Court of Claims in its opinion (rec. pp. 9, 10). It was there held that under the Treasury regulations, which we have above quoted, the cotton was subject to an exaction of one-fourth of its market value in New York (rec. pp. 9, 10).

This, however, does not settle the question arising under Section 162 of the Judicial Code. That section provides: "The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June 1, 1865, under the provisions of the act of Congress approved March 12, 1863, entitled 'An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States,' and acts amendatory thereof where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States."

If the entire lot of cotton, worth $123,110, had been seized on its arrival at New Orleans on the 6th of June, 1865, and had been sold for that sum and the proceeds placed in the Treasury, the claimants would clearly be entitled to recover the full amount of the proceeds.

The acts of 1863 and 1864 authorized seizures and gave the owners the right to come into the Court of Claims and claim the net proceeds.

It is no answer to a claim for such net proceeds to say that the seizures were legal. The intention of Congress in enacting Section 162 as part of the Judicial Code of 1911 was to declare that even though the seizures were legal, the proceeds should be returned to the owners.

What would be true of the entire lot of cotton if seized and sold and the net proceeds put into the Treasury, must be true of a portion of the price when paid under protest as a means of obtaining possession of the entire lot of cotton.

In Section 162, June 1, 1865, is not a mere arbitrary date. It expresses a public policy of treating all transactions since June 1, 1865, in the way of seizure of cotton or exaction of money as of a character of which the Treasury should no longer retain the benefit. It enacts that the Government shall restore such exactions to the original owners. It is an act of peace. In effect it says that the Court of Claims shall treat the Civil War as at an end from and after the 1st day of June, 1865.

It is a declaration that the Court of Claims shall take up and adjudicate all claims of this character upon the theory that the war was over June 1, 1865, and that thereafter these exactions from a prostrate people, whether in cotton or in cash, shall no longer be

retained in the Treasury of the United States but shall be returned to their owners.

In *United States* v. *Klein*, 13 Wall. 128, this court in an opinion by Chief Justice Chase, said (pp. 138, 139):

"The government constituted itself the trustee for those who were by that act declared entitled to the proceeds of captured and abandoned property, and for those whom it should thereafter recognize as entitled."

Here it is recognized that the act of 1863 was not a finality, and that future legislation opening the doors still further was quite conceivable and would be proper.

Theoretically and in law the Civil War ended at some date in 1866. *United States* v. *Anderson*, 9 Wall. 56; *The Protector*, 12 Wall. 700.

Yet in the proclamation of President Johnson of May 10, 1865 (13 Stat. 757), it is distinctly recognized that "armed resistance to the authority of this government in said insurrectionary States may be regarded as virtually at an end."

This court in *Lamar* v. *Browne*, 92 U. S. 187, 193, said in regard to the seizure of cotton in Georgia in August, 1865:

"It is true, as claimed, that when the seizure was made, active hostilities in Georgia had entirely ceased. The last organized army of the rebellion east of the Mississippi had surrendered almost two months before, and a very large portion of the national forces had been disbanded. The blockade had been raised, and trade and commercial intercourse in that part of the insurgent territory again authorized; but still in fact, a state of war existed."

It is this actual fact that the rebellion was practically at an end by June 1, 1865, which Congress recog-

nized in the enactment of Section 162 of the Judicial Code.

In this view the present suit is not inconsistent with *Cutler* v. *Kouns*, 110 U. S. 720. The Treasury agent was not personally liable because he acted under departmental authority which gave him power to make the exactions. As, however, organized opposition to the authority of the United States had come to an end by the 1st of June, 1865, that date was fixed by Congress as the time from and after which all claimants whose property had been seized should be entitled to come into the Court of Claims and claim its repayment. After Congress has opened the doors of that court to claimants whose property was seized after June 1, 1865, they can no longer be met with the defense that because the seizure was lawful when made, there can be no recovery on account of it. To sustain such a defense would be to "keep the word of promise to the ear and break it to the hope."

3. Suit for Money Valid.

The fact that the property was not sold in the market, but that the money was paid directly by the owner of the cotton to an agent of the United States and by him paid into the Treasury, constitutes no bar to the maintenance of this claim.

The act of 1863 (*ante*, pp. 6, 7), authorized the seizure of "abandoned or captured property" and gave the owner the right to prefer his claim for the proceeds.

The act of 1864 (*ante*, pp. 7, 8), which was by its terms amendatory of that of 1863, provided for the purchase of products of States declared in insurrection, the moneys arising therefrom to be paid into the Treasury of the United States.

Section 162 of the Judicial Code of 1911 (*ante*, pp. 8, 9), authorizes claims both under the act of 1863 "and acts amendatory thereof."

This money reached the Treasury through the act of 1864, amendatory of that of 1863. It is therefore a proper subject of claim for its return under Section 162 of the Judicial Code.

In *Mezeix* v. *United States*, 6 C. Cls. 232, as we have seen (*ante*, p. 17), money seized by an officer of the United States and paid over into the Treasury was treated as giving rise to a valid claim under the original captured and abandoned property act of 1863 and its amendment of 1864, equally with a claim for property taken and sold.

Conclusion.

The manifest purpose of Section 162 of the Judicial Code was to declare the war at an end upon June 1, 1865, and to return all exactions thereafter made to their owners, where the proceeds had reached the Treasury. Full effect should be given to that beneficent purpose. Money collected from owners of cotton in order to secure its release should not be refused to the owner now suing for it any more than should the proceeds of cotton seized in kind.

The judgment of the Court of Claims should be reversed and the case remanded to that court with directions to overrule the demurrer and for further proceedings.

George A. King,
William B. King,
William E. Harvey,
Attorneys for Appellants.

O'PRY, SOLE SURVIVING DESCENDANT AND SOLE HEIR OF KOUNS, ETC., ET AL. *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 216. Argued March 12, 1919.—Decided March 31, 1919.

The Act of July 2, 1864, c. 225, 13 Stat. 375, § 8, providing for the purchase for the United States at designated places of the products of States declared in insurrection, at not exceeding three-fourths their New York market value, was strictly in addition, as its title declared, to the Abandoned Property Act of 1863, and not an amendment of that act in the sense of § 162 of the Judicial Code, which gives jurisdiction to the Court of Claims over claims for property taken under the latter act and amendments and sold. P. 328.

The words "addition" and "amendment," as applied to statutes, may or may not have the same meaning, according to the purpose. P. 330.

51 Ct. Clms. 111, affirmed.

THE case is stated in the opinion.

Mr. George A. King, with whom *Mr. William B. King* and *Mr. William E. Harvey* were on the brief, for appellants.

Mr. Assistant Attorney General Brown for the United States.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Section 162 of the Judicial Code, enacted March 3, 1911, provides as follows:

"The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June 1, 1865, under the provisions of the Act of Congress approved March 12, 1863, entitled 'An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States,' and Acts amendatory thereof where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding."

To avail herself of that section Isabel Kouns O'Pry alleged herself to be the sole surviving descendant and sole heir of John Kouns and brought this suit in the Court of Claims and for grounds thereof set forth the following facts: June 6, 1865, George L. Kouns and John Kouns were owners of 900 bales of cotton in two lots, of which 350 bales had been raised in Texas and 550 bales raised in Louisiana, and which after the cessation of

hostilities were brought to New Orleans, June 6, 1865. The cotton was worth the sum of $123,110.

On that date—June 6, 1865—the Act of Congress of July 2, 1864, c. 225, 13 Stat. 375, was in force, § 8 of which made it lawful for the Secretary of the Treasury with the approval of the President to authorize agents to purchase for the United States products of States declared in insurrection at designated places at such prices as might be agreed on with the seller, not exceeding three-fourths of the market value at the latest quotation in the city of New York. [The other provisions of the statute are not necessary to quote.]

The Act of July 2, 1864, was an amendment of the Act of March 12, 1863, entitled "An Act to provide for the Collection of abandoned Property and for the Prevention of Frauds in insurrectionary Districts within the United States." (12 Stat. 820.)

In pursuance of the authority thus conferred the Secretary of the Treasury designated, among other cities, the city of New Orleans as a place of purchase and by a subsequent regulation directed that the agents appointed should receive all the cotton brought to the places designated as places of purchase and forthwith return to the seller three-fourths of the cotton or sell the same and retain out of the price thereof the difference between three-fourths of the market price and the full price thereof in the city of New York.

The agent appointed at New Orleans was Otis N. Cutler, and, on the arrival of the Kouns cotton, Cutler, as such agent, took possession of it and refused to release the same or to allow the owners to have any custody of it until they paid him one-fourth of its market value, being the sum of $30,777.50. They paid the same under protest and it was placed in the Treasury of the United States, where it remains.

June 13, 1865, the President removed by proclamation

all restrictions upon intercourse and trade in products of States theretofore in insurrection and theretofore imposed in the territory *east* [italics ours] of the Mississippi River.

Thereafter the Kounses brought suit in a New York court against Cutler, which was removed to the Circuit Court of the United States for the Southern District of New York. The ground of Cutler's liability was alleged to be that his retention of the cotton and the exaction of money from them was unwarranted in law. They recovered judgment, but it was reversed by the Supreme Court of the United States (*Cutler* v. *Kouns*, 110 U. S. 720), and a new trial ordered. The suit was then dismissed.

The loyalty of the appellants is alleged. The Court of Claims dismissed the suit upon the demurrer of the Government. The court expressed the opinion that the claim did not come either "within the letter or the spirit of section 162 and the correlative statutes" and said: "At the time of this transaction the Kouns firm could not have made any disposal of the cotton in question had it not been for the provisions of said § 8, it being insurrectionary territory. That section prescribed the method and the conditions upon which it might be sold to the Government. The firm complied with those conditions and were doubtless glad to do so. We do not think where one only complies with the law in his transaction with the Government in the sale of cotton and receives all that the law allows him he has any valid claim under § 162 of the Judicial Code."

To fulfill the conditions of necessary parties on account of a doubt expressed by the court, there was an intervening petition by Charles Schneidau, assignee in bankruptcy of George L. Kouns. He adopted the petition of Isabel Kouns O'Pry "and jointly with her claims as therein prayed."

By order of the court the petition was amended and

Schneidau made a party claimant. The Government's demurrer to the petition as amended was sustained.

The case is not in broad compass, involving as it does only the relation and construction of statutes, but it is not easy to state it briefly. The petition recites, as we have seen, that the Kounses in their lifetime brought suit against the agent of the Government, Cutler, who had seized the cotton in New Orleans and exacted payment from them of one-fourth of its value, granting them, however, the indulgence of paying it in three installments, respectively, June 12, June 15, and June 20, 1865. They charged Cutler with an unlawful seizure of the cotton and an unlawful exaction of the money. They obtained judgment in the Circuit Court, but the judgment was reversed by this court, 110 U. S. 720, and the following is, so far as material, a summary of the decision in the case:

In consequence of the Act of July 13, 1861, c. 3, 12 Stat. 255, it was lawful for the President to declare that the inhabitants of all States in rebellion against the United States were in a state of insurrection and that all commercial intercourse between them should cease and be unlawful so long as such condition of hostilities should continue. And August 16, 1861 (12 Stat. 1262) the States of Texas and Louisiana were declared to be in like condition and intercourse was forbidden between them and other States and parts of the United States. On April 26, 1862, the city of New Orleans, however, was occupied by the National forces and from that date was excepted from the operation of the Non-intercourse Act.

In this state of affairs Congress passed the Act of July 2, 1864, referred to in the petition, § 8 of which authorized the purchase of products of States declared in insurrection, which included the cotton in suit, and it was seized by virtue of such authority and the payments mentioned

exacted. It was contended that the cotton was exempt from such action by proclamation of the President of June 13, 1865. The contention was rejected, the cotton not being, as it was said, the product of territory *east* of the Mississippi River. It was, however, further urged that the President's proclamation of June 24, 1865, removed all restrictions as well from products of territory *west* of the Mississippi River. To this it was replied that upon the arrival of the cotton in New Orleans the rights of the Government to it became fixed and that at such time "one-fourth its value was as much the property of the government as the other three-fourths were the property of the defendants in error [the Kounses]. No proclamation of the President could transfer the property of the government to them." It was hence decided that Cutler "had authority under the law and regulations of the Treasury Department to exact the money" which the suit was brought to recover. The defense of the statute of limitations was also sustained.

It is now asserted that notwithstanding such decision a claim has accrued to appellants by virtue of § 162 of the Judicial Code upon which they are entitled to recover. It will be observed by reference to that section that the Court of Claims is given jurisdiction of claims of those whose property was taken subsequent to June 1, 1865, under the provisions of the Act of March 12, 1863, "and Acts amendatory thereof," where the property was sold and its net proceeds were placed in the Treasury of the United States, and they are directed to be returned upon judgment rendered for the claimant. Appellants invoke the relief of these provisions by the contention that the cotton was taken under the provisions of the Act of March 12, 1863, because the Act of July 2, 1864, was an amendment to it, and that therefore the provision of § 162 of the Judicial Code is completely satisfied; in other words, that the money exacted was taken under the

Act of March 12, 1863, "and Acts amendatory thereof." It is further contended that the conditions of § 162 being thus satisfied it is no answer to say that the seizure of the cotton was legal, it being the intention of Congress to declare that even in such case "the proceeds should be returned to the owners." And this contention counsel offers as an answer to *Cutler* v. *Kouns*, *supra*, and that Congress having by § 162 opened the doors of the Court of Claims "to claimants whose property had been seized after June 1, 1865, they can no longer be met with the defense that because the seizure was lawful when made, there can be no recovery on account of it. To sustain such a defense would be to 'keep the word of promise to the ear and break it to the hope.'" The Government opposes the contentions.

The Act of March 12, 1863, 12 Stat. 820, is entitled "An act to provide for the Collection of abandoned Property and for the Prevention of Frauds in insurrectionary Districts within the United States." Its first section empowers the Secretary of the Treasury to appoint a special agent or special agents to collect and receive all abandoned or captured property in any State or Territory in insurrection, with an exception not material. Section 2 provides that the property so received or collected may be put to public use or sold at public auction and the proceeds thereof put into the Treasury of the United States. By § 3 a bond may be required of the agent or agents, who may be required to keep a book or books of accounts showing those from whom the property was received, the cost of transportation and proceeds of sale. It is further provided that the owner of the property may at any time within two years prefer a claim for the proceeds thereof and upon proof of loyalty receive the residue of the proceeds.

It will be observed that the act had a special purpose and was directed to the receipt and collection of property

in a particular condition, either abandoned or captured, recognizing, however, that there might be a just claim to it, but limiting the assertion of the claim to two years after the suppression of the rebellion.

The Act of July 2, 1864, 13 Stat. 375, describes itself to be "An Act in addition to the several Acts concerning Commercial Intercourse between loyal and insurrectionary States, and to provide for the Collection of captured and abandoned Property, and the Prevention of Frauds in States declared in Insurrection." The act, therefore, is declared to be an "addition" to preceding legislation, not an amendment to it. Is an addition the same as amendment? We are informed by the dictionaries that in addition the added parts remain independent and by amendment there is change and, it may be, improvement. The words and the processes they respectively describe may, however, be regarded as roughly or even accurately interchangeable and in investigating the meaning of legislation we must regard that possibility and resolve a doubt in the words by the purpose of the legislation. In other words, whatever the relation of the statutes, their purpose must be looked to to determine the application to them of § 162. So looked to, we agree with the Government that the purpose of the Act of July 2, 1864, demonstrates the contrary of the contention of appellants, and that the act was strictly in addition to prior acts and not an amendment of the Act of March 12, 1863, in the sense asserted. The latter act applied to a different situation. The cotton collected under it and to which its provisions applied might be the property of those innocent of disloyalty but victims of the disorder and violence of the times, and the Government constituted itself a trustee for them and gave them the opportunity, at any time within two years after the suppression of the rebellion, to establish their right to the proceeds, requiring of them nothing but proof of loyalty and ownership. *United States*

v. *Anderson*, 9 Wall. 56, 65; *United States* v. *Padelford*, 9 Wall. 531; *United States* v. *Klein*, 13 Wall. 128.

The cotton in the present case, unlike that to which the Act of March 12, 1863, applied, was the subject of a business enterprise and taken to a market opened by the United States forces upon the conditions expressed in the Act of July 2, 1864—that is, that its owners should turn over to the Government one-fourth of the cotton, or its money equivalent, which would immediately become the property of the United States. *Cutler* v. *Kouns*, *supra*. The conditions in the two situations, therefore, are in broad contrast and it could not have been the intention of § 162 to confound the conditions. The section did no more than remove the bar of limitation of time to sue that was given by the Act of March 12, 1863. It did not intend to transfer property that had become that of the United States.

Judgment affirmed.